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In re Application of :  
Moriguchi et al. :  
Application No. 10/826,233 : DECISION DISMISSING PETITION  
Filed: May 7, 2004 :  
Attorney Docket No. 112857-500 :

This is a decision on the petition filed October 21, 2004, which is being treated as a petition requesting that the above-identified application be accorded the original filing date of April 16, 2004, with 75 pages of specification as part of the original disclosure.

On April 16, 2004, applicants deposited the above-identified application. However, the date-stamped postcard receipt contained a notation by a USPTO employee indicating nonreceipt of the 75 page specification. In response, on May 7, 2004, applicants submitted a "Response to Return Receipt Postcard Notation" with a duplicate copy of the specification. Thereafter, the Office of Initial Patent Examination accorded the application a filing date of May 7, 2004, the date of receipt of the pages of specification.

On August 18, 2004, the Office of Initial Patent Examination mailed applicants a Notice of Omitted Item(s) in a Nonprovisional Application, indicating that the application had been accorded a filing date of May 7, 2004, and advising applicants that pages 68, 69, and 71 of the specification appeared to have been omitted.

In response, on October 18, 2004, applicants submitted the present petition and the petition fee. Applicants state that the present application is a continuation application of Application No. 09/292,834, which issued a U.S. Patent No. 6,764,767 on July 20, 2004. Applicants further state that the entire disclosure of the prior application was incorporated by reference.

10/826233

Application No. ~~10/830,905~~

Page 2

It is noted that the application transmittal letter identified this application as a continuation application of prior application No. 09/292,834, and specifically incorporated by reference the disclosure of the prior application.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (Emphasis supplied).

Unfortunately, the present petition must be dismissed because applicants failed to submit pages 68, 69 and 71 of the specification with the present petition. The application cannot be accorded the earlier filing date of April 16, 2004, with the entire specification as part of the original disclosure without pages 68, 69, and 71.

Therefore, the petition is dismissed without prejudice. Any renewed petition under 37 CFR 1.182 must be filed within TWO MONTHS of the date of this decision and be accompanied by a copy of pages 68, 69 and 71 of the specification. This period is not extendable. See 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail:            Mail Stop Petition  
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Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions